



James B. Wright
Senior Attorney

REC'D 1411 Capital Boulevard
Wake Forest, North Carolina 27587-5900
Telephone: 919-554-7587
Fax: 919-554-7913

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EXECUTIVE SECRETARY

November 5, 1999

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway

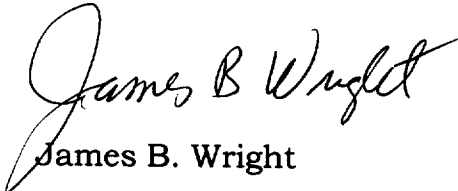
RE: Docket No. 98-00626; (UTSE 1998 Price Cap Adjustment)
UTSE Response to CAD's Petition for Rehearing

Dear Mr. Waddell:

Enclosed for filing in the above case are the original and thirteen copies of United Telephone-Southeast, Inc.'s Response to the Consumer Advocate's October 28, 1999 Petition for Rehearing.

A copy of this Response is being furnished to counsel of record.

Sincerely yours,


James B. Wright

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Enclosures

CC: Consumer Advocate (with enclosure)
Guy Hicks (with enclosure)
Paul Monk (with enclosure)
John Hamlin (with enclosure)
Steve Parrott (with enclosure)
Dennis Wagner (with enclosure)
Laura Sykora (with enclosure)

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

REC'D IN
REGULATORY DIVISION

'99 NOV 8 PM 3 57

IN RE: UNITED TELEPHONE-SOUTHEAST, INC.)
TARIFFS TO REFLECT PROPOSED CHANGES)
UNDER PRICE REGULATION PLAN)

DOCKET NO. 98-00626

EXECUTIVE SECRETARY

UNITED TELEPHONE-SOUTHEAST, INC.
RESPONSE TO
CAD'S PETITION FOR REHEARING

United Telephone-Southeast, Inc. ("United"), respectfully files this Response to the two issues raised in the Consumer Advocate Division's ("CAD's") October 28, 1999 Petition for Rehearing ("Petition for Rehearing") regarding the Tennessee Regulatory Authority's ("Authority") October 13, 1999 "Order Reflecting the Decision Regarding the 1998 Price Regulation Plan Adjustment for United Telephone Southeast, Inc." ("Order").

1. **Cumulative Adjustment.** The CAD's first issue for rehearing deals with whether, under T.C.A. Section 65-5-209 (e), price adjustment amounts can accumulate from year to year, or whether adjustments can be taken only in the year in which the event giving rise to the adjustment occurs, that is, "use it or lose it".

This issue was addressed extensively in both prehearing and posthearing pleadings filed by all parties as well as during the May 13, 1999 hearing. The

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CAD generally reargues in his Petition for Rehearing the same points he raised earlier. United believes the Authority has properly construed the statute, from both a legal and factual perspective.

From a statutory construction viewpoint, the CAD argues that the Authority ignores the first portion of Section 65-6-209(e). However it is in fact the CAD who ignores portions of the statute, including the later portions of Section (e), as well as all of subsection (f), since his position is even remotely supportable only if the first portion of Section (e) is considered in isolation. Also, the statute itself does not mandate that annual adjustments under T.C.A. Section 65-5-209(e) must be taken in any particular year. Subsection (e) states the “company **may** adjust its rates”, a term of discretion rather than obligation

From a factual perspective, the CAD agreed in writing in prior cases via his signed Stipulation that the methodology that was applied in this case was in compliance with the statute. Further, the **CAD’s own witness in this case again expressly confirmed the CAD’s position that the methodology was in compliance with Section 65-5-209(e).** (See May 13, 1999 hearing transcript at page 214, copy attached). The CAD now attempts to disavow these facts and reverse its position. Such an inexplicable reversal should not be allowed and the CAD should be estopped as a matter of law.

From a public interest viewpoint, the CAD demands that price increases be implemented immediately rather than permitted to be deferred. This “use it

or lose it” position is not supported by the language in the statute. Allowing a company to defer a permitted increase to a later time should be considered a benefit to consumers since price adjustments are prospective only (Tr. p 192). The CAD’s position appears more likely to be contrary to the consuming publics’ interest, rather than in furtherance thereof. The CAD tries to counter this result by alleging the accumulation of increases could be anticompetitive since United could maintain low prices to the detriment of competing telecommunications providers. This hypothetical concern was shown to be utterly without merit since any competitor could, through resale, provide any service United provides, but at a guaranteed discount from United’s prices.

2. Pay Phone Subsidy. With respect to the pay phone subsidy issue, the CAD, in its Petition to Rehear, asserts the Authority erred when the Authority ordered United to eliminate the payphone subsidy and restate its 1995 base year revenues to reflect the removal of the payphone subsidy. Remarkably, the relief granted by the Authority was what the CAD urged the Authority to do and yet now the CAD is alleging error because it was denied discovery and meaningful cross examination (Petition at page 4). The CAD also states that “the CAD had no access to the materials necessary to cross examine.” (Petition at page 5). It is inexplicable how the CAD can make this assertion since the CAD is the very one to put the evidence into the record. (See Exhibits to

prefiled testimony of CAD witness Buckner). For the CAD to now complain about matters the CAD put in the record is baseless and hypocritical.

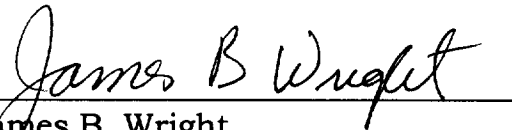
In addition, at the May 13 hearing the CAD specifically agreed with United that the hearing in this proceeding was to go forward that day with the purpose of closing the evidentiary portion of the case (Tr. pp 60, 61). The CAD's present Petition now asserts he is entitled to additional discovery and cross examination. This amounts to a refusal to honor the intent of his agreement made at the hearing, is highly questionable and should not be permitted.

Furthermore, the CAD's request should be denied as a matter of judicial efficiency and economy. The issue of payphone costs is the subject of a separate, generic proceeding. The Directors have determined that final decisions on payphone subsidy amounts are appropriate for a generic proceeding which has the benefit of numerous participants and which will permit the receipt of evidence and consideration of different policy perspectives from all of those parties. The CAD is asking the TRA to duplicate the purpose of the generic proceeding and make the same decisions in this case, but prematurely and without the benefit of the other participant's perspectives. Such an action is wasteful at best and may be seen to be in error after the more thorough generic proceeding is concluded. If the request is granted and additional discovery were allowed, United believes it would be impossible to provide any meaningful data in addition to that already of record since the final decision regarding the manner and the extent of payphone subsidies is yet to

be definitively decided. As the Authority Order states (page19, note 35), the final amount will be determined in Docket 97-00409.

For all of the foregoing reasons, the CAD's Petition for Rehearing should be denied.

Respectfully submitted,
UNITED TELEPHONE-SOUTHEAST, INC.

By 

James B. Wright

Senior Attorney

14111 Capital Boulevard

Wake Forest, NC 27587-5900

November 5, 1999

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1 By our interpretation, I think it does, to the extent
2 that what we've recommended as a maximum annual
3 increase that it speaks of in 65-5-209(e).

4 Q. On page 3 of your testimony, you ask
5 yourself the question does the methodology set forth in
6 the stipulation in Docket 96-01423 conflict with the
7 requirements of Section 209.

8 A. Right.

9 Q. And you answer the question by saying, no,
10 the methodology does not conflict; is that correct?

11 A. Right. And then that's my interpretation
12 again.

13 Q. Okay. I just wanted to be sure we're
14 clear. So the Consumer Advocate Division is not
15 attacking the methodology today?

16 A. The interpretation of the methodology.

17 Q. And the Consumer Advocate was given the
18 opportunity to withdraw its agreement to the stipulated
19 methodology; isn't that correct?

20 A. I'm really not familiar with the
21 methodology. I wasn't involved in any of the
22 negotiations and how it was drawn up or the time lines
23 on that, sir.

24 Q. You were not involved in the negotiations
25 for stipulation?